

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ROUNTREE FORD LINCOLN LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 257:43-b unpaid salary
RSA 275:42 VIII unpaid draw and commission
RSA 275:43 I unpaid commissions

Employer: Roundtree Ford Lincoln LLC, PO Box 526, Keene NH 03431

Date of Hearing: November 19, 2014

Case No. 48874

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 10, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on November 3, 2014. The Wage Claim is for \$3,792.00.

The claimant testified that he worked for the employer from January 1, 2014 until September 2, 2014. He was employed as the General Sales Manager for the dealership. The claimant said that he had a weekly salary of \$2,000.00 plus 6% of the gross income, minus the \$2,000.00. The claimant stated that he was paid bi-weekly and that on the 15th of the month the employees received any bonus payments due.

The claimant said that for the pay period from August 4, 2014 until August 17, 2014, he was paid the \$4,000.00 draw. In the last pay period he was reduced to \$9.00 per hour for all hours worked. The claimant feels that this action was a change in his pay plan and should therefore be illegal. For the last pay period he received 112 hours of work at the \$9.00 rate. The claimant believes that he is due \$3,592.00 in his salary plus commissions.

The employer testified that the entire wage package was laid out in a letter at the start of the claimant's employment. The claimant was on a draw from unearned commissions. Because

the control of "aging" inventory was a key part of the claimant's work, the hiring agreement set the total of 6 for all vehicles over 60 days. When the claimant left the employ of the company there were 38 units over the 60 day limit.

When the claimant was hired he was given a set amount of \$15,000.00 per month to reduce the inventory and bring the dealership into the set guidelines. This lasted for three months and then was reduced to \$12,000.00 a month for two months so that the claimant would not suffer the loss of commissions while bringing the dealership into line with the goals.

The claimant then went on a straight draw against commission for the remainder of his employment until the last month. The employer paid the claimant, in the last pay period, 112 hours at a rate of \$9.00 per hour. The claimant was paid a total of \$1,008.00 for the last pay period. The final commission statement showed that the claimant was overpaid by \$1,537.26.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275: 43-b I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the

beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law deals with the payment of salary.

RSA 275: 42 VIII "Payroll card" means an access device issued and accepted by a financial institution to access funds from the employee's payroll card account.

This section of the law deals with the payment of wages by the process of a draw against commissions.

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This part of the law deals with the payment of commissions as part of the wages paid.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid in part and valid in part. The claimant has the burden to show that there are wages due and owing and he did not meet this burden for the entire Wage Claim. He did achieve the burden for part of the Wage Claim.

The claimant was a salaried employee for the first five months and then was switched to the standard draw against commission. The claimant was responsible for many aspects of the sales program and the straight salary program was to allow him to get the "aged" inventory into line so it would not show against his commissions.

Once the claimant started on the draw against commission he was no longer a salaried employee. Once the month of August came, there was a large inventory of "aged" vehicles and this was going to affect his commissions. The employer changed the wage plan to hourly for the last pay period.

It is clear that sometime after May of 2014 the claimant was on a draw versus commission pay plan. There is no indication that the employer could change this pay plan to hourly without the proper notice. It is also clear that the claimant did not work four days into September of 2014.

It is the finding of the Hearing Officer that the claimant should have been allowed to draw his final \$4,000.00 for the last two weeks. The employer did not make a proper change to an hourly pay plan. However, from this \$4,000.00 the claimant was paid \$1,008.00 which leaves a balance of \$2,992.00. There is also a section of the signed pay plan that allows for a deduction of \$1,500.00 from the last pay check to offset chargebacks that occurred during the first sixty days of employment.

The Wage Claim is valid in the amount of \$1,442.00. There is no finding for any work performed in September of 2014.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,442.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,442.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 19, 2014

TFH/slh